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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Intel Corporation

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Serial No. 75/859,872

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Bobby A. Ghajar of Howrey Simon & Arnold White for Intel Corporation.

Tricia McDermott Thompkins, Trademark Examining Attorney, Law Office 114 (K. Margaret Le, Managing Attorney).

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Before Hanak, Bucher and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On November 29, 1999, Intel Corporation (applicant) applied to register the mark INTEL NETSTRUCTURE (typed) on the Principal Register for the following goods in International Class 9.[1]

> Computer hardware; routers; hubs; servers; switches; integrated circuits; computer firmware, namely computer operating systems software; fixed function servers; computer networking hardware; semiconductor devices; computer hardware and software for creating, facilitating, and managing remote access to and

[1] Serial No. 75/859,872. The application contains an allegation of a bona fide intention to use the mark in commerce.

communication with local area networks (LANs), virtual private networks (VPN), wide area networks (WANs) and global computer networks; router, switch, hub and server operating software; computer software for use in providing multiple user access to a global computer information network for searching, retrieving, transferring, manipulating and disseminating a wide range of information; application software, namely, computer communications software, inter-network access and application management software, network management software, protocol translation software, and teleconferencing software; computer software tools for the facilitation of third party software applications; computer network adapters; computer hardware and software for wireless network communications; remote access servers, remote access adapters, remote access software, and remote access gateways; networking equipment, namely, digital loop carriers, multiplexers, optical transmitters, fiber optic terminals; and manuals sold as a unit and downloadable from a global computer network.

The examining attorney has refused to register applicant's mark without a disclaimer of the term "netstructure" under the provision of Section 6(a) of the Trademark Act. 15 U.S.C. § 1056(a). The examining attorney has required a disclaimer of the term because she found that the term was merely descriptive of applicant's goods. See 15 U.S.C. § 1052(e)(1). After the examining attorney made the requirement for a disclaimer final, applicant subsequently filed this appeal.

Both applicant and the examining attorney have made numerous arguments and submitted a substantial amount of evidence in support of their positions. The examining attorney's evidence begins with several dictionary

definitions for the relevant terms. The term "network" is defined as a "system of computers interconnected by telephone wires or other means in order to share information. Also called *net.*"[2] An excerpt from the Acronym Finder website confirmed that "net" is defined as "network." The term "structure" is defined as "something made up of a number of parts that are held together in a particular way;" "The way in which parts are arranged together to form a whole;" and the interrelation or arrangement of parts in a complex entity."[3]

The examining attorney also submitted numerous excerpts from the Internet and automated databases.[4] A sample of these articles is set out below:

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[2] *American Heritage Dictionary of the English Language, Third Edition* (1992).

[3] *American Heritage Dictionary of the English Language, Third Edition* (1992).

[4] With her brief, the examining attorney attaches numerous printouts from websites that were already in the record. Applicant has pointed to the fact that many, if not the majority, of these printouts are from foreign countries (Bulgaria, Germany, Australia, Japan, Israel, Romania, Korea, and Italy). Applicant argues that the issue of descriptiveness should be proven by evidence from the United States and not from international sources. The Board has recently held that it "is reasonable to assume that professionals in medicine, engineering, computers, telecommunications and many other fields are likely to utilize all available resources, regardless of country of origin or medium. Further, the Internet is a resource that is widely available to these same professionals and to the general public in the United States. Particularly in the case before us, involving sophisticated medical technology, it is reasonable to consider a relevant article from an Internet web site, in English, about medical research in another country." In re Remacle, 66 USPQ 1222, 1224 n.5 (TTAB 2002). While we will

The structure of any network, including the configuration of network servers and workstations…
New York Law Journal, January 26, 1998.

Miller is the person in charge of the station's Intranet, which uses the Internet's network structure to deliver information to each computer terminal…
Peoria Journal Star, February 24, 1998.

Telecommunications is moving gradually toward a layered network structure with client-server relations between the layers-copper (wire), (radio frequency), fiber or coaxial cable.
Radio Comm. Report, December 20, 1999.

New client types, changing database layouts, new database servers, and even changes to the structure of the network require modification of most Internet application code.
InfoWorld, May 1, 2000.

The Internet's reliance on a few key modes makes it especially vulnerable to organized attacks by hackers and terrorists, according to a new study on the structure of the worldwide network.
Chattanooga Free Press, July 28, 2000.

Networking/Network Structure
Networks are usually classified using three properties: Topology, Protocol, and Architecture.
PCMECHANIC, January 11, 2002.

It doesn't help that finding files requires you to know about the structure of the network; where the servers are[;] what the directory structures are and the like.
Network World, September 9, 1996.

Network Structure
Installing Commercial Communications Systems Requires Ample Forethought
By planning a new building project's communicative needs now and for the future, architects, engineers, and builders can help shape their industry.

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consider this evidence, we do not find that the foreign articles add significantly more support to the examining attorney's case.

Constructech (2002).

Other printouts show use of the term "net structure" in the following ways.

> Have you ever wondered what the Internet looks like?… CAIDA used 17 computers to inject data into the Net and then track the flow to 661,260 destinations. The result: 27,549 lines show the paths the data traveled between 9,667 nodes. Margaret Murray of CAIDA says this map is one of the most accurate representations of the Net's structure.
> *ON Magazine*, January 2002/February 2002.

> Such searches are a common feature of Internet navigation, because the Net's structure is nonlinear, and its contents change all the time.
> *Chronicle of Higher Education*, April 28, 2000.

> The Army's frequency managers use the Communications-Electronics Operating Instructions System to automate their capabilities to assign frequencies to Combat Net Radios and to identify net structure that is changed daily to provide security.
> *Engineering Management Journal*, September 1998.

The examining attorney does not assert "that the mark describes the individual goods, but that it describes the purpose of the goods." Brief at 4. Finally, the examining attorney concluded that the "record manifestly shows that applicant's hardware and software are used to manage and support the structure of the network." Brief at 12.

Applicant, on the other hand, maintains that the examining attorney improperly dissected the term "netstructure" and that the examining attorney's evidence only shows that "a combination of 'network' and 'structure'

has various meanings." Brief at 7. For example, applicant argues that "'structure,' when used in conjunction with 'net,' means the 'make up' or composition of the 'internet.'" Brief at 8. Applicant also argues that other articles indicate that hardware and network structure are two different things and that network structure refers to the configuration of a computer network.

In addition, applicant submitted evidence that the Office has not required disclaimers or maintained descriptiveness objections for marks containing the term "net."[5] See, e.g., Registration Nos. 2,448,343 (NETMACHINES for communications servers); 2,453,036 (NETPRINTS for online posting of articles); 2,176,575 (NETMOUSE for computer mice); 1,266,983 (NETSWITCH for computer network switches); 1,328,271 (NETWARE for computers and computer programs); 1,984,055 (NETLAN for installation, setup, maintenance, and repair of computer networks); and 2,435,343 (NET SILICON and design for computer hardware and software for connecting peripherals into a network).

We reverse.

[5] We agree with the examining attorney that applicant's arguments regarding the treatment of other terms by the Office are not relevant to this case.

A mark is merely descriptive if it immediately describes the ingredients, qualities, or characteristics of the goods or services or if it conveys information regarding a function, purpose, or use of the goods or services. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217 (CCPA 1978). See also In re Nett Designs, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001). Furthermore, the CCPA has held that term "'merely' is considered to mean 'only'" In re Quik-Print Copy Shops, Inc., 616 F.2d 523, 205 USPQ 505, 507 n.7 (CCPA 1980). We look at the mark in relation to the goods or services, and not in the abstract, when we consider whether the mark is descriptive. Abcor, 200 USPQ at 218.

However, in order for a term to be merely descriptive, it must describe, at least, "a single, significant quality, feature, function, etc." of the services. In re Venture Lending Associates, 226 USPQ 285, 286 (TTAB 1985) (emphasis added). See also In re Gyulay, 820 F.2d 1216, 1217, 3 USPQ2d 1009, 1009 (Fed. Cir. 1987). When this case law is applied, the line between suggestive and descriptive terms is not always bright. The Federal Circuit has emphasized the immediateness of the information the mark conveys in drawing the suggestive/descriptive demarcation.

> A mark is merely descriptive if it immediately conveys qualities or characteristics of the goods. However, if a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods, then the mark is suggestive.

Nett Designs, 57 USPQ2d at 1566 (citation omitted) (emphasis added).

Here, when we view the term "netstructure" in light of this case law and the evidence of record, we find that it is not clear what information would be immediately conveyed to prospective purchasers of applicant's goods. Therefore, we cannot find that the term "netstructure" would only have a descriptive meaning when applied to the goods.

First, we must agree with applicant that the term "net" can mean both the Internet and a generic network for a computer system. Certainly, the examining attorney is correct in pointing out that the Internet is a form of computer network. On the other hand, in the commercial marketplace, there is a fundamental conceptual difference between a proprietary computer network and the Internet, and applicant has argued as follows: "Applicant's mark has been evaluated as though it incorporated the designation NETWORK STRUCTURE or INTERNET STRUCTURE. The very fact that the Trademark Attorney has construed Applicant's mark to mean *either* of these phrases demonstrates that there are

various ways to dissect and interpret that element of Applicant's mark." Applicant's Brief at 3 (emphasis added). Second, as applicant has observed, the term "structure" can have different meanings when applied to computer systems.[6] While we agree that the term "net" would have descriptive significance when applied to computer network adapters, networking equipment, and similar products, the term "structure" is more nebulous. Third, when the terms are combined, it is not clear what the meaning the term "netstructure" would immediately convey to a prospective purchaser about the goods in the application. As the examining attorney's references show, the terms, "network structure," "Internet structure," and similar terms have various meanings in the computer field. These terms are used to refer to the organization of the Internet; the physical make-up of a telecommunications or computer network; and the design of these networks. Furthermore, while some prospective purchasers may understand the term to mean that applicant's goods are used to manage and support the structure of a network, it is not clear that this would be the only meaning the term would

[6] "'[S]tructure' may easily refer to: 1) a pattern with a grouping of items; 2) a building that houses network equipment; 3) an assemblage that is used to itemize network equipment; 4) the organization of the top-level domain .net; or 5) the composition or organization of the world wide web." Brief at 5.

convey. It is just as likely that the term would convey a rather nebulous reference to the Internet or a computer network.

We find the case of In re The Rank Organization Limited, 222 USPQ 324 (TTAB 1984) to be instructive. The applicant in that case touted its laser technology as the reason its high fidelity loudspeakers were superior to its competitors. However, the Board concluded "that the term 'LASER' requires mature thought and imagination in order to determine what features or characteristics applicant's goods possess" and the "fact that the term "LASER" is capable of being analyzed does not render the term merely descriptive." Id. at 326. Similarly here, an analysis of the term "netstructure" and the goods may lead a prospective purchaser to understand that the term has some meaning in relationship to the goods, but we are not confident that the meaning would be immediately conveyed to these purchasers.

Because of this uncertainty on our part, our controlling precedent requires us to resolve any doubts we may have on the question of descriptiveness in the applicant's favor. In re Morton-Norwich Products, Inc., 209 USPQ 791, 791 (TTAB 1981) (The Board's practice is "to

resolve doubts in applicant's favor and publish the mark for opposition"). We do so in this case.

Decision: The refusal to register applicant's mark INTEL NETSTRUCTURE without a disclaimer of the term "netstructure" is reversed.